

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CHERYL W.

Claimant,

Vs.

FRANK D. LANTERMAN REGIONAL  
CENTER,

Service Agency.

OAH NO. L 2005090376

DECISION

This matter came on regularly for hearing, before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, at Los Angeles California on July 28, 2006.

Claimant's father appeared on claimant's behalf.

Pat Huth, Esq. represented the Frank D. Lanterman Regional Center (service agency).

ISSUE

Is claimant eligible for services?

FACTUAL FINDINGS

1. Claimant, whose date of birth is April 11, 1992, is a 14-year-old female.
2. On February 15, 2005, claimant's father called the service agency and requested services on claimant's behalf.

3. On March 29, 2005, an intake/psychological assessment of claimant was done by a service agency Intake Specialist. During the intake process, claimant's mother provided past reports and school assessments that indicated that claimant had been considered eligible for special day classes at Village Glen West, a non-public school/agency (the NPA), based on her meeting the school district's criteria of "Autism." The Intake Specialist also reviewed a May, 2001 written report by Dr. Andrea Moskowitz, indicating that claimant suffered from Asperger's Disorder (Asperger's) and Obsessive-Compulsive Disorder (OCD). Claimant's mother also informed the Intake Specialist that since claimant was six-years-old she began exhibiting increased levels of generalized anxiety and fearfulness. Based on the documents and the interview with claimant's mother, the Intake Specialist recommended a "medical examination if needed," and a psychological examination. The Intake Specialist then referred claimant's matter to the service agency's "Multidisciplinary Assessment Team for regional center eligibility determination." (Exhibit 4.)

4. After several scheduling delays due to claimant's father's health condition, a psychological evaluation of claimant was conducted on May 23, 2005 and June 28, 2005, by Timothy D. Collister, Ph.D., a clinical psychologist.<sup>1</sup> Prior to meeting with claimant and conducting an evaluation of claimant, Dr. Collister reviewed the following documents: A May 7, 1997 letter from Lisa deFaria, MSW; claimant's February 8, 2005 Individualized Education Program (IEP) documents; and the school district's Psychoeducational Evaluation of claimant, dated December 15, 2003 and January 28, 2004. Dr. Collister interviewed claimant and claimant's mother and he administered the following tests: the Leiter International Performance Scale-Revised; the Wide Range Achievement Test-Revision 3; the Peabody Picture Vocabulary Test-Third Edition; the Beery Developmental Test of Visual-Motor Integration; the Gilliam Asperger's Disorder Scale; and the Vineland Adaptive Behavioral Scales. Dr. Collister concluded that respondent suffered from Overanxious Disorder of Childhood and OCD. Dr. Collister also concluded that while claimant did exhibit "features" of Asperger's, she did not meet the diagnostic criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Third Revision (DSM-IV-TR) for a diagnosis of Asperger's. Dr. Collister's observations and opinions are set forth in detail in his Psychological Evaluation report. (Exhibit 5.)

5. On August 10, 2005, a service agency Multidisciplinary Assessment Team consisting of a service agency Intake Manager, two Medical Doctors, and a Psychologist, met. The team reviewed all the available reports concerning claimant and concluded that claimant was not eligible for service agency services because she "Does not present with a developmental disability." (Exhibit 1.)

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<sup>1</sup> Claimant expressly waived any challenges to the timeliness of the service agency's assessment(s).

6. In a letter, dated August 11, 2005, the service agency notified claimant of its determination that she was not eligible for service. The letter states, in pertinent part:

This is to confirm in writing that our Multidisciplinary Assessment Team has determined that Cheryl does not have a developmental disability as defined in the California Welfare and Institutions Code Section 4512 (a) and California Code of Regulations, Title 17, Section 54000. . . .

The assessment results indicate that Cheryl's level of cognitive functions are in the Low-Average to Average range with mild adaptive deficits. The findings are consistent with the following diagnoses: Overanxious Disorder of Childhood, and Obsessive-Compulsive Disorder. Cheryl does not present with mental retardation and her condition is not closely related to mental retardation. Cheryl's cognitive functioning is not impaired by a condition, which requires treatment similar to that required by mentally retarded individuals and there is no evidence of epilepsy, autism, or cerebral palsy. In sum, Cheryl does not have a developmental disability as defined above. (Exhibit 2.)

7. Claimant timely appealed the service agency's denial by filing a "Fair Hearing Request," and the instant hearing ensued.

8. Dr. Collister was the only mental health care expert who testified during the instant hearing. Dr. Collister was presented with the facts that claimant was receiving special education services from the school district based on the qualifying condition of autism and that she had previously been diagnosed by Dr. Moskowitz, a psychiatrist, as suffering from Asperger's. Dr. Collister acknowledged that Asperger's is an "autism spectrum disorder," however, in his professional opinion, claimant does not suffer from Asperger's. Dr. Collister did not have enough information to be able to reconcile his findings with that of the school district or that of Dr. Moskowitz. Dr. Moskowitz did not testify during the instant hearing and Dr. Collister did not know what testing instruments were used by Dr. Moskowitz, or what information Dr. Moskowitz had been provided during her assessment of claimant. According to Dr. Collister, he administered the Gilliam Asperger's Disorder Scale (GAD) during his evaluation based on claimant's mother's concerns. The GAD not only addresses the presence of many Asperger's signs and symptoms, but also takes into account the frequency with which the signs and symptoms occur. The DSM-IV-TR sets forth the criteria necessary for a diagnosis of Asperger's. According to the DSM-IV-TR, Asperger's is a Pervasive Developmental Disorder characterized by "severe and pervasive impairment." While claimant did present with features of Asperger's, she did not present with the "severe and pervasive impairment" required to be

diagnosed as having Asperger's. It is clear, however, that claimant suffers from OCD and the exhibition of anxiety associated with OCD could easily produce "many of the aspects [features/signs and symptoms] that can be identified as Asperger's." (Exhibit 5.) The results of the GAD revealed that the GAD "quotient were below the 1<sup>st</sup> percentile, showing low or non-probable likelihood of Asperger's Disorder." (Exhibit 5.)

9. The previous findings, considered as a whole, reveal that claimant does not suffer from mental retardation, cerebral palsy, epilepsy, autism,<sup>2</sup> a disabling condition found to be closely related to mental retardation, or a disabling condition that requires treatment similar to that required for individuals with mental retardation.

### LEGAL CONCLUSIONS

1. The Factual Findings, considered in their entirety, reveal that the Agency was correct in concluding that claimant is ineligible for service agency services. As noted in Welfare and Institutions Code section 4502, only persons with developmental disabilities are eligible for Lanterman Act services. The term "Developmental disabilities" is defined by Welfare and Institutions Code section 4512, subdivision (a), as:

. . . a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual . . . this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

Additionally, California Code of Regulations, title 17, section 54000, provides that developmental disabilities do not include handicapping conditions that are "solely learning disabilities," or "solely psychiatric disorders."

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<sup>2</sup> Claimant's father asserts that claimant has Asperger's and since Asperger's is an "Autism Spectrum Disorder," she qualifies for services under the diagnosis of Autism. Claimant's assertion, however, lacks evidentiary support. Insufficient evidence was presented that claimant has Asperger's. According to the only mental health care expert who testified during the hearing, Dr. Collister, claimant does not suffer from Asperger's.

In the present instance, as set forth in Findings 4, 5, 6, 8, and 9, claimant does not suffer from mental retardation, cerebral palsy, epilepsy, autism, a disabling condition found to be closely related to mental retardation, or a disabling condition that requires treatment similar to that required for individuals with mental retardation. Consequently, claimant is not eligible for service agency services.

2. Claimant contends that the plain wording of Welfare and Institutions Code section 4512, subdivision (a), indicates that while “developmental disabilities” shall include mental retardation, cerebral palsy, epilepsy, autism, a disabling condition found to be closely related to mental retardation, or a disabling condition that requires treatment similar to that required for individuals with mental retardation, it may include other conditions, such as OCD. In other words, the statute is not all inclusive. Claimant’s contention lacks merit. If the legislature had intended to include other conditions it would have said something to the effect, that developmental disabilities shall include, but are not limited to mental retardation, cerebral palsy, epilepsy, autism, a disabling condition found to be closely related to mental retardation, or a disabling condition that requires treatment similar to that required for individuals with mental retardation. The legislature, however, did not elect to include such language in its definition of developmental disabilities, thus evidencing its intent to make the conditions listed in the statute all inclusive.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The service agency's determination that respondent is not eligible for services is upheld.

Dated: August \_\_\_\_\_, 2006

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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

**Note: This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5 (b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**

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